

From: David Pakman
To: Microsoft ATR
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Subject: Comments on proposed Final Judgment

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Dear Sirs:

It is with great sadness and despair that I write you to comment on your proposed settlement with the Microsoft Corporation. I write you as a concerned citizen, former technology executive, and consumer.

First, I fear that my comments and others you may receive from concerned citizens are simply part of the process and can have no bearing on your decision to move forward with any settlement or not. Will my comments really have an impact on your thinking? From all that I have read about the settlement process, you and 9 states AG's have already decided to move forward with the proposed settlement. Sad, indeed.

Next, I fear that you will not even be watching the computer industry by the time the true effects (or lack thereof) of this settlement are seen...you will be off on the next industry, the next project, unaware that your actions in the next few months will determine the fate of true competition in the IT industry -- the engine of our economy for the foreseeable future.

Under Joel Klein, the US DoJ successfully humbled Microsoft, the most fierce and ruthless monopoly in the history of capitalism. The arrogance and blindness of Microsoft's own actions were turned against them and put on public display for all the world to see. Finally, others were able to see what those of us in the tech industry already knew: Microsoft's dominance and likely illegal predatory tactics were driving innovation out of many new markets, artificially raising prices, and depriving the consumer of ordinary fair market benefits. Would anyone care?

Yes, it seemed. The US DoJ really cared. They were undeterred in their pursuit of justice and remedy. They would not settle for easy work-arounds...instead they wanted to see the problem solved. They knew from MS's history that MS have become experts at saying one thing and doing another. Evidence at trial even suggested that MS's had skillfully maneuvered around the 1995 Consent Decree and had all the power to do it again. A simple decree with new rules for MS to follow would never solve the problems of cultured predatory tactics.

But then something changed. Somehow your thinking turned 180 degrees. Now, suddenly, the DoJ was leading the charge towards a new consent decree through settlement. I read the proposed Final Judgment and CIS with wide eyes. Could there really be something here? Could this decree actually change MS's behavior? What was in it that would be different this time?

The truth is, nothing. There is nothing new here. MS will simply work around any new "rules" which are put in place and will become experts at delaying any of your future investigations into them. The 3-person "compliance" panel will do nothing to change 20 years of behavior instilled in every employee by its management. MS learns from its past. It has won with its tactics of the past and they will be employed again.

Most importantly, this settlement will not give the capital markets any confidence that in markets where MS competes, true competition will emerge. Said simply, just as it has been for the last 15 years, both public and private investors will not fund companies in markets where MS has announced their intention to compete...because MS advantages fueled by their OS monopoly are too great. Without investment, there will be no innovation.

In short, you really had the chance to make a difference and change things in the computer industry. And as that is certainly the most important industry to the relevance of the future economy, it was an important task for you. But for some reason, you seem bent on failing by somehow going against the evidence of this very case: that MS has a history of perfectly out-maneuvering the government on decrees of this nature. They are a company who NEVER played by the rules. How then will some new rules solve the problem?

I can't help but wonder what caused your turn-around in strategy? Truly was it pressure from a very business-friendly Administration? Was it truthfully a feeling that SOME remedy had to happen soon (after 7 years of pursuing this case, there was a sudden need to see it end)?

We, the public, will never really know. But we will know the effects of your actions, one way or another. If you are right, we will feel the benefit of renewed competition in the most important world markets. If you are wrong, however, the consequences are too great to enumerate. And if you are wrong, will you be around to correct your mistakes? Will there ever be an opportunity like the one in front of you now to fundamentally alter and restore competition in these markets?

I hope, for the sake of some 300 million US consumers, that you have not yet made up your mind.

(For a more detailed analysis of the impacts of the proposed settlement, I like this article the best:
<http://www.pff.org/pr/pr110201settlement.htm>)

Good luck,

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